

REMARKS

Claims 14, 17-19, 21-24, 27, 28, 31, 34-37 and 39-41 remain pending in the present application. Claims 1-13 directed to the non-elected invention have been canceled.

Rejection for Double Patenting

Claims 14, 17-19, 21-24, 27, 28, 31-37 and 39-41 stand rejected under the judicial doctrine of nonstatutory obviousness-type double patenting over U.S. Serial No. 12/021,546. Applicants traverse this basis for rejection and respectfully request reconsideration and withdrawal thereof.

The Examiner maintains the double patenting rejection as set forth in the previous Office Action, explaining that co-pending application no. 12/021,546 was filed with claims which conflict with those of the present application, and suggests that the language of 35 U.S.C. §121 therefore does not prohibit use of a double patenting rejection in such case.

Without debating the statutory language with the Examiner, Applicants direct the Examiner's attention to MPEP 804 I.B.1, wherein procedures for dealing with non-statutory double patenting rejections are set forth:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. MPEP 804 I.B.1 (Emphasis added).

Such is the case in the present application. The only remaining rejection is a non-statutory double patenting rejection, and as such the Examiner should

withdraw the rejection and permit the present application to issue, without a terminal disclaimer.

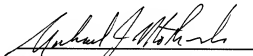
In view of the foregoing, it is respectfully submitted that the present claims are in condition for allowance. Prompt notification of allowance is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-2478(14758).

If the Examiner has any questions or wishes to discuss this application, the Examiner is invited to contact the undersigned representative at the number set forth below.

Respectfully submitted,

Date: July 28, 2009

A handwritten signature in black ink, appearing to read "Michael J. Mlotkowski", is written over a horizontal line.

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